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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JULIUS MARQUIS ROBERTS,

Defendant and Appellant.

B286036

(Los Angeles County
Super. Ct. No. MA062885)

APPEAL from a judgment of the Superior Court of Los Angeles County, Charles Chung, Judge. Affirmed.

William G. Holzer, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A Taryle and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

Julius Marquis Roberts (Roberts) pled no contest to continuous sexual abuse of a child. The trial court placed Roberts on probation for five years. The trial court later revoked Roberts's probation at a probation revocation hearing and imposed the midterm sentence of 12 years. Roberts appeals the judgment on the basis that the admission of hearsay testimony violated his rights under the United States Constitution, resulting in the imposition of a harsher sentence. For the reasons set forth below, we affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

On June 18, 2014, Roberts pled no contest to one count of continuous sexual abuse of a child in violation of Penal Code section 288.5, subdivision (a). On July 24, 2014, the trial court placed Roberts on probation for five years and ordered him to serve 365 days in county jail with standard terms and conditions, including the conditions that he attend sexual compulsion counseling and have no visitation with the victim who was a minor at the time. On May 27, 2015, the trial court found that Roberts was in violation of the terms of his probation after he failed to attend counseling as ordered. The trial court ordered Roberts to serve an additional 365 days in county jail and reinstated the terms of probation. On August 31, 2016, the trial court found that Roberts was in "marginal compliance" with his probation after considering the probation report which stated that Roberts's attendance at sex offender counseling had been sporadic and that he had not paid the fine imposed by the trial court. The trial court then ordered Roberts to appear for another progress report on November 30, 2016.

Prior to the November 30, 2016 progress report hearing, probation officer Nancy Ward (Ward) conducted a random visit to

Roberts's residence on October 20, 2016. Ward testified that during the random visit, she encountered a young female who identified herself as the victim in the case. Ward testified that the victim told her that Roberts was not home and that she thought he might be at work. Ward also testified that the victim told her that she was staying at that address three days per week. Ward asked the victim to tell Roberts they had stopped by the home. Ward said that prior to this random visit she had seen Roberts there during the prior two months, but had never seen the victim at this address. On the same day of her random visit, Ward received a voicemail from Roberts where he said that "he had been meaning to get with [Ward] to talk to [her] about his living arrangements" and that "he heard [that she] had been to the home."

On November 8, 2016, the trial court called the case for hearing pursuant to a request from the probation department. Roberts did not appear and the trial court revoked probation and issued a bench warrant. Around eight months later, in July 2017, Roberts was arrested on an unrelated charge in San Bernardino. On July 11, 2017, the trial court held a bench warrant hearing but did not reinstate probation or set bail.

The trial court held a probation violation hearing on October 25, 2017. The trial court admitted Ward's testimony, including the victim's statements to Ward during her random visit as well as her report that Roberts had missed two sessions of sex offender group therapy and had not complied with his mandatory reporting requirements since October 2016. Roberts objected to the admission of the victim's statements on the grounds that they were hearsay, lacked foundation and called for speculation. The trial court overruled the objections, noting "that

for probation violation hearings there are relaxed evidentiary rules, and the right to confront and cross-examine does not apply.” The court also received the testimony of Los Angeles County District Attorney’s Office Investigator Robert Estrada (Estrada) who testified that he tried unsuccessfully to reach the victim by phone several times before the hearing. Estrada testified, however, that he received a call from someone who identified herself as the victim, but was interrupted by another woman who got on the phone and said, “ ‘I am her mother and she is a minor and you can talk to me about it.’ ” Estrada replied that the victim was no longer a minor and that he needed to speak with her.

After the trial court gave its indicated sentence of 12 years, Roberts presented the testimony of the victim’s mother, S.H. S.H. testified that Roberts was her boyfriend. She testified that she was the only person that lived at the address listed as Roberts’s residence. She added that although Roberts had been living there in August and September of 2016, he had moved out in early October 2016 because she and Roberts “were having problems.” S.H. explained that Roberts was “kind of was like gone but not really gone.” She further explained that he was “here and there . . . for a few days” and then would reside with another woman with whom he had a romantic relationship on other days.

S.H. testified that the victim did not live with her, but that the victim would visit occasionally. S.H. said that the victim told her that Ward had been to the home looking for Roberts. S.H. emailed Roberts about Ward’s random visit. S.H. testified that she had not seen Roberts with the victim since he was placed on probation.

At the conclusion of the hearing, the trial court found that Roberts violated the terms of his probation. The trial court said, “According to the probation officer he has failed to report. He has not enrolled in sex offender counseling. He has not maintained a residence and/or notified the probation officer of his residence.” The trial court also found, over Roberts’s objections to the admission of the victim’s statements, that Roberts was in the presence of and potentially living with the victim.

Before imposing the midterm sentence the trial court said, “So one of two things has happened. Either we know where [Roberts] resides and that he is residing at the very place we find the victim, or we have lost total track of him and we have no idea where a heinous sex offender is now roaming.” The trial court summarized that “the best case scenario is we have lost track of a sex offender” while the “[w]orst case scenario is [the victim] is living with the sex offender who was abusing her.” The trial court found Roberts in violation of the terms of his probation and sentenced him to the midterm of 12 years in state prison.

DISCUSSION

Roberts admits that the trial court would have found him in violation of his probation even without the admission of the victim’s out-of-court statements. However, Roberts contends that the admission of those statements resulted in the imposition of a harsher sentence. On the other side, the People concede error, but contend that any error was harmless. Therefore, the only remaining issue for us to evaluate is whether Roberts has demonstrated that it is “reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.” (*People v. Watson* (1956) 46 Cal.2d 818,

836.) We conclude that the record on appeal establishes that any such error was harmless under this standard.¹

There was substantial evidence that was independent of the victim's hearsay statements to support the imposition of the midterm sentence. The trial court found that Roberts performed "very poorly" on probation. Roberts had not reported to his probation officer and had not been attending sex offender counseling. Worse, when the probation officer made a random visit to Roberts's address, she encountered the victim. After the random visit, Roberts absconded and did not report to probation for several months. In fact, Roberts resurfaced only when he was arrested on a separate charge in San Bernardino and brought to court on a bench warrant. Moreover, the trial court acknowledged the two different scenarios based on the admission or exclusion of the victim's statements. Either Roberts was in the wind for nine months after Ward encountered the victim at Roberts's address or Roberts had in fact been living with the victim. Both scenarios constituted a violation of probation and

¹ While the People concede error, the record shows that Roberts did not object on the grounds that are raised here. Mainly, Roberts argues for the first time on appeal that the admission of the victim's testimony violated his due process right of confrontation. Generally, a party must raise an objection on specific grounds in order to allow the opportunity to address the admissibility of the testimony so that the trial court can make an informed ruling. (See generally *People v. Davis* (2008) 168 Cal.App.4th 617, 627.) To the extent that Roberts preserved a narrow due process argument on appeal, that argument fails because the admission of the victim's statements was harmless error and thus did not render the probation revocation hearing fundamentally unfair. (See *People v. Partida* (2005) 37 Cal.4th 428, 436.)

would support the imposition of the midterm. Thus, it is clear from the record that the victim's statements were not critical to the imposition of the midterm sentence, but rather, just another fact in Roberts's history of poor performance on probation that would have provided additional support for the trial court's judgment.

Accordingly, we find that Roberts has not met his burden to show that it was reasonably probable that the trial court would have reached a more favorable result had it excluded the victim's out-of-court statements.

DISPOSITION

The judgment is affirmed.

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DHANIDINA, J.

We concur:

EDMON, P. J.

LAVIN, J.